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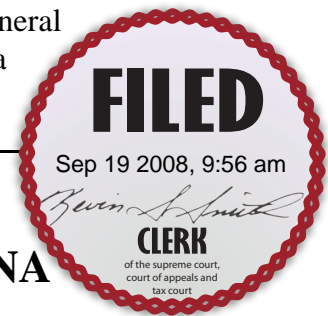
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**IN THE  
COURT OF APPEALS OF INDIANA**



VICTOR G. CURBELLO,  
Appellant-Defendant,

VS.

STATE OF INDIANA,  
Appellee-Plaintiff.

) ) ) ) ) ) ) ) )

No. 45A03-0802-CR-52

APPEAL FROM THE LAKE SUPERIOR COURT  
CRIMINAL DIVISION, ROOM 3  
The Honorable Diane Ross Boswell, Judge  
Cause No. 45G03-0507-MR-7

**September 19, 2008**

**MEMORANDUM DECISION – NOT FOR PUBLICATION**

**RILEY, Judge**

## STATEMENT OF THE CASE

Appellant-Defendant, Victor G. Curbelo (Curbelo), appeals his sentence for involuntary manslaughter, a Class C felony, Ind. Code § 35-42-1-4.

We affirm.

## ISSUE

Curbelo raises one issue for our review, which we restate as: Whether his sentence is inappropriate when the nature of his offense and his character are considered.

## FACTS AND PROCEDURAL HISTORY

Curbelo had a romantic relationship with Tyronica Dinkins (Dinkins). However, their relationship deteriorated. Sometime in 2005, Dinkins obtained a restraining order against Curbelo because of his acts of intimidation and battery. Despite the restraining order, Dinkins still interacted with Curbelo and his family. On July 6, 2005, Dinkins got into an altercation with Curbelo's adult son. The police were called, and they placed both Dinkins and Curbelo's son under arrest. Curbelo's son had a pistol on him at the time, and the police gave the pistol to Curbelo. Curbelo hid the gun in his bedroom. Later that same day, Curbelo told Dinkins to go grab gold chains or something out of his bedroom to go pawn to get some money, and she went and grabbed the gun. Curbelo took the gun away from her and locked it in his truck.

Dinkins left for a period of time and then came back to Curbelo's home. She did not have her key to Curbelo's home with her, and Curbelo offered to drive her to her father's house where she thought she had left the key. While they were traveling, Dinkins opened the

console of the truck and pulled out the gun. Curbelo and Dinkins struggled with each other, and the gun fell between Curbelo's legs. Curbelo picked the gun up, and the two continued to struggle. During the struggle Curbelo shot Dinkins twice, once in the hand, and once in her back. Dinkins then opened the passenger door and jumped out as the truck was still moving. Curbelo stopped and drove back to where Dinkins lay. He checked her for a pulse, but found none. Curbelo grabbed her body and placed it on the floor of his truck. He drove off and went to the jail to bail his son out.

Afterward, Curbelo drove to the police station and approached an officer in the parking lot. He explained that he had shot Dinkins and gave the officer the gun, spent casings, and bullets. He told officers where Dinkins had jumped out of the truck and rode with them to the scene.

On July 8, 2005, the State filed an Information charging Curbelo with murder, a felony, I.C. § 35-42-1-1. On January 31, 2007, a jury trial began, but a mistrial was granted after the State elicited testimony from a witness which violated an Order of the trial court suppressing evidence. On November 6, 2007, another jury trial began. On November 15, 2007, the jury returned a verdict of not guilty of murder, but guilty of the lesser included offense of involuntary manslaughter, a Class C felony, I.C. § 35-42-1-4. On January 3, 2008, the trial court sentenced Curbelo to six and one-half years in the Department of Correction.

Curbelo now appeals. Additional facts will be provided as necessary.

## DISCUSSION AND DECISION

Curbelo argues that his sentence is inappropriate when the nature of his offense and his character are considered. Specifically, he contends that the nature of the offense does not support a six and one-half year sentence because the jury made no finding that Curbelo intended to seriously harm or kill Dinkins, and despite the restraining order against Curbelo, Dinkins had placed herself back in Curbelo's life. He also contends that his character does not support a six and one-half year sentence because he had never been convicted of another crime.

Our supreme court recently reiterated:

The Indiana Constitution provides, "The Supreme Court shall have, in all appeals of criminal cases, the power to . . . review and revise the sentence imposed." Ind. Const. Art. VII, § 4. Pursuant to this authority, we have provided by rule that "[t]he Court may revise a sentence authorized by statute if, after due consideration of the trial court's decision, the Court finds that the sentence is inappropriate in light of the nature of the offense and the character of the offender." App. R. 7(B). Indeed, although a trial court may have acted within its lawful discretion in determining a sentence, Article VII, Sections 4 and 6 of the Indiana Constitution authorize independent appellate review and revision of a sentence imposed by the trial court.

*Smith v. State*, 889 N.E.2d 261, 263 (Ind. 2008) (citations and punctuation omitted). The purpose of the express authority to review and revise sentences is to ensure that justice is done in Indiana courts and to provide unity and coherence in judicial application of the laws. *Pruitt v. State*, 834 N.E.2d 90, 121 (Ind. 2005).

Indiana Code section 35-50-2-6 provides that the advisory sentence for a person who commits a Class C felony is four years; therefore, the trial court sentenced Curbelo to a term two and one-half years beyond the advisory sentence for his crime. In coming to this

sentence, the trial court found as mitigating the fact that Curbelo had no criminal convictions at the time, although proceedings were currently pending in a separate cause number. However, the trial court found as aggravating the fact that Curbelo was subject to a restraining order prohibiting contact with the victim at the time he shot her.

When reviewing the nature of the offense, we note that Curbelo shot Dinkins twice, one of those times being in the back. Further, although Curbelo turned himself in after the shooting, he did not do so until after going to bail his son out of jail. The fact that he did not immediately seek out medical attention for Dinkins speaks both to the nature of the offense and his questionable character. And finally, we must agree with the trial court that the fact that Dinkins had a restraining order against Curbelo at the time he shot her further demonstrates his character. Curbelo should have refused to interact with Dinkins as required, and by not doing so he violated a court order. Altogether, we conclude that the trial court's sentence of six and one-half years is not inappropriate when the nature of the offense and Curbelo's character are considered.

### CONCLUSION

Based on the foregoing, we conclude that Curbelo's sentence is not inappropriate when the nature of his offense and his character are considered.

Affirmed.

BAILEY, J., and BRADFORD, J., concur.